IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/12/2002

CORAM

THE HONOURABLE MR.JUSTICE N.V.BALASUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

T.C.No.33 of 1999 and T.C.No. 71 of 1999 and T.C.No. 72 of 1999

The Director of Income-tax
(Exemptions), Madras. ..... Applicant

-Vs-

Paramartha Bhushanam
Sri Nathalla Sampath Chetty
Charities, Madras. ..... Respondent

Reference arising out of the order of the Income-tax Appellate Tribunal, C-Bench, Madras in ITA.Nos.1085 (Mds)/94, 1986(Mds)/94 and 530 (Mds)/93 dated 27.7.1994, at the instance of the Revenue.

!For applicant :: Mr.T.Ravikumar, Jr.SC.for IT.

^For respondent :: Mr.N.Devanathan.

:JUDGMENT

N.V.BALASUBRAMANIAN,J.
The assessee is a charitable trust having income from property and income from one Marriage Hall (hereinafter referred to as ' Kalyanamandapam' as called in the order of the Appellate Tribunal). The assessee during the previous years relevant for the assessment years 1986-8 7, 1987-88 and 1988-89, admitted the income from Kalyanamandapam and claimed exemption under section 11 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'). The Assistant Commissioner of Income-tax, assessing officer, however found that the Kalyanamandapam was let out to general public at competitive rates and on daily basis and hence, the income was not exempt in view of section 11 (4-A) of the Act and brought to tax the income from Kalyanamandapam. The assessee preferred appeals against the orders of assessment before the Commissioner of Income-tax (Appeals). The Commissioner of Income-tax (Appeals), following the decision of the Appellate Tribunal in the case of Tuluva Vellala Association Vs. C.I.T., held that the nature of income of the assessee from Kalyanamandapam showed that it was an income from business and the conditions for exemption under section 11(4A) of the Act were not satisfied. He therefore held that the assessing officer was justified in

not granting exemption under section 11 of the Act.
3. The assessee preferred further appeals before the Income-tax Appellate Tribunal. The Appellate Tribunal, however, on the basis of the decision of this Court in C.I.T. V. MADRAS STOCK EXCHANGE LTD. (105 ITR 546) and the decisions of the Madhya Pradesh High Court in MAHAKOSHAL SHAHEED SMARAK TRUST v. C.I.T. (140 ITR 795) and C.I.T. v. GANESHRAM LAXMINARAYAN GOEL (147 ITR 468), held that the predominant object of the trust was to carry out the activity of general public utility and not to earn profit and the income derived by letting out the property of the trust was used to fulfil th e object of the trust and therefore the income derived from the Kalyanamandapam was not its business income. The Appellate Tribunal also held that section 11(4A) of the Act as inserted by Finance Act, 1983 with effect from 1.4.1984 would not apply as by Finance (No.2)Act, 1991 the provision has been substituted and the provisions of section 11(4-A) as substituted by Finance (No.2) Act, 1991 with effect from 1.4.1992 would apply for the earlier assessment years in question also. The Appellate Tribunal also recorded a finding that the entire income from Kalyanamandapam was utilised by the assessee for the maintenance of trust and charities and therefore the income was exempt under section 11 of the Act. Consequently, the Appellate Tribunal allowed the appeals preferred by the assessee. The Revenue having failed to obtain a reference, approached this Court and on the basis of directions of this Court, the Appellate Tribunal has stated a case and referred the following question of law for our consideration:

" Whether on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the income derived by the assessee by letting the Kalyanamandapam is exempt under section 11 of the I.T.Act, 1961?"

4. We heard learned standing counsel for the Revenue and the learned counsel for the assessee. Though both the counsel advanced extensive arguments, we are of the view that it is not necessary to consider them in detail as we find that the Appellate Tribunal has committed serious errors on two aspects of the matter. The Appellate Tribunal, in our opinion, was not correct in holding that the effect of substitution of section 11(4A) of the Act by the Finance (No.2) Act, 1991 as amended in 1992 was to have effect from the date of insertion of section 11(4A), that is, with effect from 1.4.1984. The Finance (No.2) Act, 1991 came into force with effect from 1.4.1992 and the intention of the Parliament was to substitute the existing section 11(4A) of the Act with effect from 1.4.1992 and the intention is manifest that the section 11(4A) of the Act as substituted was inserted only from 1.4.1992. The Appellate Tribunal has placed, no doubt, emphasis on the expression, 'substitute' for its view that the section 11(4A) of the Act as amended now was substituted from 1.4.1984 itself. The Appellate Tribunal relied upon the decision of the Karnataka High Court in VENKATAPPA v. KRISHNAPPA (173 ITR 678) and the decision of the Supreme Court in SHAMRAO v. DISTRICT MAGISTRATE (AIR 1952 SC 324) to hold that the substitution of the amended section 11(4A) of the Act was with effect from 1.4.1984 itself.
5. We have carefully considered both the decisions. The decisions were rendered with reference to the applicability of section 6 of the General Clauses Act and the Supreme Court and the Karnataka High Court

have held that though the substituted section would take the place of the original section for all intents and purposes, both the Courts have not held that the substituted section would take effect from the date of insertion of pre-amended section. On the other hand, the reading of the Finance (No.2) Act, 1991 shows the intention of the legislature is that the existing section 11(4A) of the Act is to be substituted with effect from 1.4.1992 and not earlier. It is not advisable to attribute retrospective effect to the provision when the legislature has expressly declared that the substituted provision should come into force from a particular date. As a matter of fact, the Supreme Court in ASST. C.I.T. v. THANTHI TRUST (247 ITR 785) considered sections 13(1)(bb) and section 11(4A) of the Act and held that section 13 (1)(bb) of the Act would apply to the assessment years prior to 1984-85 and section 11(4A) of the Act originally enacted would operate for the assessment years from 1984-85 to 1991-92 and section 11(4A) of the Act as substituted with effect from 1.4.1992 would operate for the assessment years 1992-93 onwards and that is the reason why the Supreme Court, while considering the claim of grant of exemption under section 11 of the Act, considered the matter separately with reference to three segments of the assessment years. The Appellate Tribunal therefore was erroneous in holding that section 11(4A) of the Act as substituted with effect from 1.4.1992 would govern the prior assessment years as well, particularly the assessment years 1986-87 to 19 88-89. The Appellate Tribunal therefore fell in error in considering the question of exemption claimed by the assessee with reference to the section 11(4A) of the Act as substituted which came into force from 1.4.1992 and not considering the claim of the assessee with reference to the section 11(4A) of the Act which was in operation from 1981 -82.

6. The Supreme Court in C.I.T. v. PATEL BROS. AND CO. LTD. (215 ITR 165) has held that where an Explanation was inserted with effect from a particular date, its application prior to that date is excluded. Here also, the section 11(4A) of the Act was substituted with effect from 1.4.1992 and that section has no application prior to the substitution of the amended section 11(4A) of the Act. This Court in C.W.T. v. VARADHARAJA THEATRES PVT. LTD. (250 ITR 523) has considered a similar question and held as under:-

" When Parliament enacts law, the law must be understood with reference to the language used in the provision construed in the light of the scheme of the Act and the object of the statute and the provisions therein. If with a view to confer a benefit which had not been conferred before the law was amended that does not necessarily imply that the amendment is to be given retrospective effect even without a legislative declaration to that effect. Every case of removal of hardship by Parliament does not indicate a parliamentary intention to remove that hardship from an anterior date unless the scheme of the Act, the context in which the amendment was made and the language of the amendment warrant such a view. When a thing which was specifically excluded is subsequently included, such inclusion cannot be regarded as indicative of an intention on the part of the Legislature to have treated what is now included as having been included at all times".

We are of the view that by applying the ratio of the decision the substituted provision of section 11(4A) of the Act by Finance (No.2) Act of 1991 would operate with effect from 1.4.1992 and not from 1.4.19 84 as held by the

Appellate Tribunal.

7. The second mistake committed by the Appellate Tribunal was that the Appellate Tribunal has considered the question whether the activities carried on by the assessee trust in letting out the Kalyanamandapam would be business or not by applying the tests which are meant to determine whether the objects of the trusts are charitable objects or not within the meaning of section 2(15) of the Act. The Appellate Tribunal fell in error in holding that where the object of the trust was general utility and not to earn profit, it would not lose its character of charitable purposes, merely because some profit arose out of the activities. This Court in C.I.T. v. MADRAS STOCK EXCHANGE LTD. (105 ITR 546) and the Madhya Pradesh High Court in MAHAKOSHAL SHAHEED SMARAK TRUST v. C.I.T. (140 ITR 795) and C.I.T. v. GANESHRAM LAXMINARAYAN GOEL (147 ITR 468) have considered the question as to what are the predominant objects of the trust and whether the activity of the trust was to carry out an object of general public utility and not to earn profit. The Appellate Tribunal therefore was not correct in applying the tests laid down in these cases in considering the question whether the activities of the trust are business activities or not.

8. It is no doubt true that Mr.Devanathan, learned counsel for the assessee relied upon the decision of this Court in C.I.T. v. SAMYUKTHA GOWDA SARASWATHA SABHA (245 ITR 242) and an unreported decision of this Court in t.c.No.235 of 1997 dated 12.11.2001 (The Director of Wealth-tax (Exemptions), Madras v. M/s.A.V.M.Charities, Madras) wherein it was held that the income derived from letting out kalyanamandapam was not a business income and hence, the provisions of section 13(1)(bb) of the Act were not applicable. On the other hand, learned counsel for Revenue strongly relied on the decision of this Court in C. I.T. v. HALAI NEMON ASSOCIATION (243 ITR 439) where this Court held that the letting out of kalyanamandapam for marriages and other functions and thereby making the premises available to others for limited periods would amount to business activity and what was granted by the owner was only a licence for a specified period and the activity of the assessee would be described as business activity with the intention of earning income from the building. Though Mr.Devanathan, learned counsel for the assessee sought to distinguish the decision of this Court in Halai Nemon Association's case on the ground that this Court was considering the question whether the income from letting out the kalyanamandapam was business income or income from house property, however, we are of the view that the decision cannot be side-tracked because this Court considered the question with reference to the assessability of income from letting out of kalyanamandapam. This Court has considered the question with reference to the head of income under which the income from letting out the kalyanamandapam would fall. We are of the view that the decision is relevant in considering the question whether the letting out of kalyanamandapam would amount to business activity or not.

9. As far as the decision of this Court in C.I.T. v. SAMYUKTHA GOWDA SARASWATHA SABHA (245 ITR 242) and the unreported decision of this Court in T.C.No.235 of 1997, dated 12.11.2001 (The Director of Wealth-tax (Exemptions), Madras v. M/s.A.V.M.Charities, Madras) are concerned, learned counsel for the Revenue would contend that this court has held that the income derived from letting out kalyanamandapam was not a business income and it was an income from house property with reference to the provisions of section

13(1)(bb) of the Act and not with reference to the provisions of section 11(4A) of the Act. However, we are of the opinion that it is not necessary to express any opinion on the question as to whether the letting out of kalyanamandapam was a business of the assessee as it would depend upon the intention of the assessee and whether it was systematically carried on by the assessee with intention to make profit out of the assets. The Incometax Officer has, no doubt, observed that the kalyanamandapam was let out to general public at competitive rates and also on daily basis and hence, it was a business activity. The Commissioner of Income-tax (Appeals) also, following an earlier order of the Appellate Tribunal in Tuluva Vellala Association v. C.I.T. dated 8.2.1950, held that the income from kalyanamandapam was business income. However, the Appellate Tribunal has not considered the question with proper perspective, but decided the question by applying a wrong test, viz., whether the predominant object of the trust was to make profit or not. We are of the view, in so far as section 11(4A) of the Act is concerned, it is the activity of the assessee that would be relevant.

10. Learned counsel for the Revenue also referred to the deed of settlement dated 1.3.1958 to show the objects of the trust. Mr. Devanathan, learned counsel for the assessee submitted that the deed was not referred to either by the assessing officer, or by the Commissioner of Income-tax (Appeals) or by the Appellate Tribunal and therefore it is not open to the counsel for the Revenue to refer to the said document. We find force in the submission of the learned counsel for the assessee as the deed was not referred to by the Appellate Tribunal or by the Commissioner of Income-tax (Appeals) or by the assessing officer in their respective orders. Though the document was included as a part of the statement of the case on the basis of the directions given by this Court under section 256(2) of the Act in T.C.P.Nos.41 1 to 413 of 1996 dated 25.2.1997, we are of the view, since the Appellate Tribunal or other authorities have not considered the said deed, it is impermissible for the learned counsel for the Revenue to refer to the said document.

11. Learned counsel for the assessee therefore submitted that the matter may be remitted back to the Appellate Tribunal so that the Appellate Tribunal may consider the question, for such course of action the counsel for Revenue did not object. Hence, we return the reference without answering the question of law referred to us. The Appellate Tribunal is directed to consider the question afresh in the light of the principles laid down earlier and in the light of the decisions referred to by us in our judgment. It is made clear that it is open to the parties to let in fresh evidence before the Appellate Tribunal. It is also made clear that it is open to the Appellate Tribunal to remit the matter to the lower authorities for fresh consideration.

12. Accordingly, the reference is disposed of without answering the question, but with a direction for fresh hearing. There will be no order as to costs.

Index: Yes
Website: Yes
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To
1. The Assistant Registrar,
Income-tax Appellate Tribunal,
Rajaji Bhavan, Besant Nagar,
Chennai 600 090 (five copies with records)

2. The Secretary,
Central Board of Direct Taxes, New Delhi (3 copies)

3. The Commissioner of Income-tax,
Madras.

4. The Commissioner of Income-tax (Appeals),
Madras-34.

5. The Director of Income-tax,
(Exemptions), Madras.